

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
EASTERN DIVISION**

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

**JUN 21 2005**

**MONSANTO COMPANY**

JAMES W. MCCORMACK, CLERK  
By: **PLAINTIFF**  
DEP CLERK

**VS.**

**CASE NO.: 2:04-CV-208 JMM**

**JOE KYLE a/k/a JOEY KYLE;  
BILLY KYLE a/k/a BROTHER KYLE  
a/k/a BROTHER BILLY KYLE;  
JOE-CO;  
J & B AG, INC.; and  
J & C AG, INC.**

**DEFENDANTS**

**MOTION TO EXCUSE  
SERVICE REQUIREMENT OF RULE 5 AND TO  
IMPOSE LIMITED GAG ORDER UPON ATTORNEY  
MARK M. HENRY AND FELLOW ATTORNEYS  
REGARDING PRIVILEGED CONTENT OF MONSANTO'S  
MOTION TO DISQUALIFY AND ITS SUPPORTING BRIEF**

Monsanto Company (hereinafter "Monsanto"), by its attorneys, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. and Frilot, Partridge, Kohnke & Clements, L.C., for its Motion to Excuse Service Requirement of Rule 5 and to Impose Limited Gag Order Upon Attorney Mark M. Henry and Fellow Attorneys Regarding Privileged Content of Monsanto's Motion to Disqualify, states:

1. On or about April 30, 2005, Mark M. Henry, and two other attorneys representing themselves as being with Mark Murphey Henry, P.A., entered their appearance on behalf of Defendants. In their entry of appearance, Mark Henry and his fellow attorneys disclosed their address as being 204 South East Avenue, Fayetteville, Arkansas.

2. Mark Henry currently is a member of Nolan Henry, PLLC, an Arkansas professional limited liability company engaged in the practice of law.

3. Nolan Henry, PLLC was formed on April 3, 2003, and, as of June 14, 2005, it remains a professional limited liability company in good standing with the Arkansas Secretary of State. *See* Exhibits "1" and "2" attached to Monsanto's Motion.

4. According to Arkansas Secretary of State records, Arkansas attorneys, Mark Henry and Cecil Duff Nolan, identify themselves as the managing members of Nolan Henry, PLLC, the registered office of which is stated to be 204 South East Avenue, Fayetteville, Arkansas.

5. Mark Henry's fellow law member and co-company manager in Nolan Henry, PLLC, Cecil Duff Nolan, represented Monsanto in connection with various legal matters from the early 1990s through at least May, 2003, a time *after* which Nolan Henry, PLLC was formed.

6. As a result of the above, on this date Monsanto has filed UNDER SEAL a Motion to Disqualify Counsel and supporting brief directed towards Mark Henry and the two other attorneys representing themselves as being with Mark Murphey Henry, P.A. Attached to said Motion are Exhibits "9" and "10" that contain attorney-client privileged information arising from Cecil Duff Nolan's legal representation of Monsanto. Portions of the attorney-client privileged content of Exhibits "9" and "10" are replicated on pages 6-7 and 10-11 of the supporting brief.

7. Because the subject of the Motion to Disqualify Counsel is not a substantive legal claim or defense directed toward the Defendants but rather an ethical issue directed purely toward attorney Henry and the two attorneys who entered their appearance with him and because the Motion to Disqualify Counsel and its supporting brief contain attorney-client privileged information arising from Cecil Duff Nolan's legal representation of Monsanto, good cause exists to (i) excuse Monsanto from serving said pleadings upon counsel John Everett as permitted under Rule under Rule 5(a) of the Federal Rules of Civil Procedure and (ii) impose a limited gag order upon attorney Henry and the two attorneys who entered their appearance with him to not disclose Exhibits "9" and "10" of said Motion and pages 6-7 and 10-11 of said supporting brief to anyone outside of the employ of their law firm.

WHEREFORE, for good cause shown Monsanto Company prays that the Court, pursuant to Rule 5(a) excuses Monsanto from serving counsel John Everett with a copy of its Motion to Disqualify Counsel and supporting brief and enters a limited Gag Order upon attorney Henry and the two attorneys who entered their appearance with him to not disclose Exhibits "9" and "10" of said Motion and pages 6-7 and 10-11 of said supporting brief to anyone outside of the employ of their law firm and for all other just and proper relief to which it may be entitled.

MITCHELL, WILLIAMS, SELIG,  
GATES & WOODYARD, P.L.L.C.  
425 West Capitol Avenue, Suite 1800  
Little Rock, Arkansas 72201  
(501) 688-8800

By

  
John K. Baker, Ark. Bar No. 97024

- AND -

Miles P. Clements, T.A. (La. #4184)  
Wayne K. McNeil (La. #20956)  
Joel E. Cape (La. #26001)  
Jeffrey A. Masson (La. #28674)  
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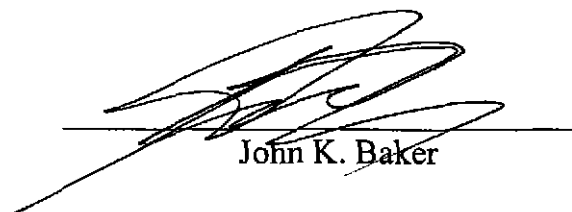
Attorneys for Monsanto Company

**CERTIFICATE OF SERVICE**

I, John K. Baker, hereby certify that a copy of the foregoing pleading has been served on the following via U.S. Mail, postage prepaid, on this 27 day of June, 2005:

Mr. John Everett  
Everett Law Firm  
1944 East Joyce Blvd.  
P.O. Box 8370  
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Mr. Mark Henry  
Nolan Henry, PLLC  
204 South East Avenue  
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John K. Baker